

REMARKS

Claims 1-53 have been presented in this application. Claims 20, 21, 23, and 24 have been previously withdrawn from consideration. Applicants gratefully acknowledge the Examiner's indication that claims incorporating ignition control during engine shutdown are allowable. As a result, notwithstanding the obviousness-type double patenting rejections addressed below, claims 5, 34, and 47-53 are allowable, while claims 1-4, 6, 8-19, 26-33, and 35-40 stand rejected on additional grounds. Although no indication of allowability has been presented by the Examiner, Claims 7, 22, 25 and 41-46 have not been independently rejected outside of the obviousness-type double patenting rejection addressed below, and are therefore presumed to be otherwise allowable.

Obviousness-Type Double Patenting Rejections

Claims 1-19, 22, and 25-53 of the present application stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-50 of Applicants' U.S. Patent No. 6,691,683 ("the '683 Patent").

In order to further prosecution of the present application, without admitting that the '683 Patent encompasses the same subject matter as the present application and without admitting that the subject matter of claims 1-19, 22, and 25-53 is obvious in view of the '683 Patent, a terminal disclaimer in accordance with 37 C.F.R. §1.321(a) has been filed with this paper to overcome these rejections. Accordingly, reconsideration of the double patenting rejections is respectfully requested.

Claim Rejections – 35 U.S.C. 102(b)

The Examiner has rejected claims 1, 2, 4, 14-17, 19, 33, and 35 under 35 U.S.C. 102(b) as being anticipated by Miyamoto (US 4,694,810). As a preliminary matter, Applicants respectfully point out that in the previous Office action dated October 14, 2003 the Examiner rejected claims 1, 2, 4, 14-17, 19, 33 and 35 (among others) under 35 U.S.C. 103(a) as being unpatentable over Miyamoto in view of Sierk (US 4,454,783). Contrary to the Examiner's statement on page 5 of the present Office action, which suggests that Applicants have previously commented on whether or not the claims require a mechanical linkage as taught by Sierk, Applicants have merely established that the combination of Miyamoto and Sierk is improper, and that the Examiner has failed to establish a *prima facie* case of obviousness.

With regard to the present rejection under 35 U.S.C. 102(b), independent claims 1 and 19 recite, among other things:

an engine control device manually operable to stop operation of the engine... and;
a fuel vent closure device [valve (claim 19)] automatically operable in response to
the manual operation of the engine control device...

Miyamoto does not show or suggest an engine control device manually operable to stop operation of the engine. Miyamoto teaches a plug cock for controlling the supply of fuel in an engine, wherein opening and closing of an air vent of a fuel tank is synchronized with that of a fuel supply passage (see col. 1, lines 6-10). Unlike the engine control device of claims 1 and 19, the plug cock of Miyamoto is not manually operable to stop operation of the engine. Rather Miyamoto teaches that the plug cock is closed after the engine has already been stopped. Col. 3, lines 48-50 of Miyamoto states "When the engine is in [the] non-operative state, the knob of the shaft 17 is turned in the opposite direction as before, so that the plug cock 1 is closed." (emphasis

added) Because the plug cock is operated after the engine is already in the non-operative state, it follows that Miyamoto requires additional structure, which is neither shown nor suggested in Miyamoto, to stop operation of the engine. With respect to claim 1, Miyamoto therefore does not show or suggest an engine control device manually operable to stop operation of the engine nor does Miyamoto show or suggest a fuel vent closure device automatically operable in response to the manual operation of the engine control device.

For these reasons, the Examiner's rejection of claims 1 and 19 under 35 U.S.C. 102(b) with respect to Miyamoto is improper. Applicants respectfully submit that claims 1 and 19 are therefore allowable. Claims 2-18, 22, 38, 41, and 44 depend from claim 1, and claims 22, 25-32, 39, 42, and 45 depend from claim 19 and are therefore also allowable for at least the reasons discussed above with respect to claims 1 and 19.

Claim 33 is a method claim and recites, among other things:

... an engine control device operable to stop operation of the engine, the method comprising:

operating the engine; and

manually activating the engine control device to stop operation of the engine and to substantially seal the fuel tank

Miyamoto does not show or suggest the subject matter of claim 33. As discussed above with respect to claims 1 and 19, the plug cock of Miyamoto is not manually operable to stop operation of the engine. Rather Miyamoto teaches that the plug cock is closed after the engine has already been stopped. See col. 3, lines 48-50. Because the plug cock is operated after the engine is already in the non-operative state, it follows that Miyamoto requires additional

structure, which is neither shown nor suggested in Miyamoto, to stop operation of the engine. Miyamoto therefore does not show or suggest the subject matter of claim 33.

For these reasons, the Examiner's rejection of claim 33 under 35 U.S.C. 102(b) with respect to Miyamoto is improper. Applicants respectfully submit that claim 33 is therefore allowable. Claims 34-37, 40, 43, and 46 depend from claim 33 and are therefore also allowable for at least the reasons discussed above with respect to claim 33.


Claim Rejections – 35 U.S.C. 103(a)

Dependent claims 3, 6, 8-13, 18, 26-32 and 36-40 are rejected under U.S.C. 103(a) as being unpatentable over Miyamoto, Miyamoto and Sierk et al., and further in view of additional references. Neither Sierk et al. nor the additional references cure the deficiencies of Miyamoto described above. Dependent claims 3, 6, 8-13, 18, 26-32 and 36-40 are therefore allowable.

CONCLUSION

For all of these reasons, entry of the Amendment and allowance of claims 1-53 are respectfully requested. The Examiner is invited to contact the undersigned at any time.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'C-72'.

Casimir F. Laska
Reg. No. 30,862

Docket No.: 018367-9631-01
Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108
(262) 956-6507